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No. 92-267

In The

Supreme Court of the United States

October Term, 1992

UJB FINANCIAL CORP., et al.,

Petitioners,

v.

IRWIN SHAPIRO, ROBERT BASSMAN, JEROME KATZ, NORMAN SALTSITZ, JEAN LEE, and CHAPPAQUA FAMILY TRUST,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

RESPONDENTS' JOINT RESPONSE TO THE MOTIONS OF THE NEW YORK CLEARING HOUSE ASSOCIATION AND THE AMERICAN BANKERS ASSOCIATION FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

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September 18, 1992

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Respondents Irwin Shapiro, Robert Bassman, Jerome Katz, Norman Saltsitz, Jean Lee, and Chappaqua Family Trust (collectively, "Respondents") respond to the motions of the New York Clearing House Association and the American Bankers Association (collectively, "Movants") to file briefs *amicus curiae* in support of the Petitoners. The motions, like the previous motion filed by other purported *amici*, disregard the rules of this Court, do not aid this Court's consideration of the issue before it, and should be denied.

As Respondents pointed out in response to a previous motion for leave to file a brief *amicus curiae*, this Court's rules governing the filing of briefs *amicus curiae* at the petition stage explicitly warn potential *amici* against filing motions for leave to file a brief where consent has been withheld, and against filing proposed briefs with redundant arguments. *See* Sup. Ct. Rule 37. Respondents have not consented to the filing of the proposed briefs because respondents did not believe that briefs from the Movants would aid in resolution of the petition. Movants' proposed briefs, in fact, do not bring to the Court any matter, relevant or otherwise, that has not previously been brought to the Court's attention. The proposed briefs serve no purpose beyond adding to the burden of the Court's staff and facilities.

Movants' proposed briefs, moreover, do not aid in this Court's consideration of the limited question presently before it. The bulk of Movants' proposed briefs are devoted to addressing questions that go to the merits of the decision below, as opposed to reasons why this Court should, or should not, issue a writ of *certiorari*. The New York Clearing House Association, for example, claims

that its filing is justified to "stress the importance of the issues to United States banks and to show the deleterious effects of the decision below on the nation's banking system." However, the New York Clearing House Association's proposed brief does nothing of the sort. To the contrary, it merely reiterates arguments already in front of the Court.

Similarly, the American Bankers Association claims that its filing is designed to emphasize the supposed importance of the issues to the banking industry. However, the American Bankers Association's brief offers nothing more than a discussion of the mechanics for setting loan loss reserves, which, in light of the discussion in the opinion below of the same mechanics and the actionability of loan loss reserves *per se* under the federal securities laws, is entirely gratuitous.

Neither purported *amicus* concerns itself with the actual decision below. Both base their arguments on a distortion of the decision below (similar to Petitioners' distortion). The actual decision below, in fact, does not justify Movants' claimed concerns. *See* Jay B. Casner, Rita W. Gordon, *Shareholder Suits: Ruling a Victory for Banks*, American Banker, August 5, 1992, at 4.

The proposed briefs, therefore, add nothing to this Court's consideration of the issues presently before it. As

a result, the motions for leave to file briefs *amicus curiae* should be denied.

DATED: September 18, 1992

Respectfully submitted,

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